
HOUSE BILL 1062

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Ludwig, Padden, R. Meyers and Orr.

Read first time January 17, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to power of fiduciaries to divide trusts; and
2 amending RCW 11.108.025 and 11.98.080.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 11.108.025 and 1990 c 179 s 2 are each amended to read
5 as follows:

6 Unless a governing instrument directs to the contrary:

7 (1) The fiduciary shall have the power to make elections, in whole
8 or in part, to qualify property for the marital deduction as qualified
9 terminable interest property under section 2056(b)(7) of the internal
10 revenue code or, if the surviving spouse is not a citizen of the United
11 States, under section 2056A of the internal revenue code.

12 (2) The fiduciary making an election under section 2056(b)(7) or
13 2056A of the internal revenue code or making an allocation under
14 section 2632 of the internal revenue code may benefit personally from

1 the election or allocation, with no duty to reimburse any other person
2 interested in the election or allocation. The fiduciary shall have no
3 duty to make any equitable adjustment and shall have no duty to treat
4 interested persons impartially in respect of the election or
5 allocation.

6 (3) The fiduciary (~~making~~) (a) who makes an election under
7 section 2056(b)(7) or 2056A of the internal revenue code, (b) who makes
8 an allocation under section 2632 of the internal revenue code, or (c)
9 who considers division of a trust otherwise of benefit to the persons
10 interested in the trust shall have the power to divide the trust into
11 two or more separate trusts, of equal or unequal value, provided, in
12 the case of a trust otherwise qualifying for the marital deduction
13 under the internal revenue code and its regulations, that the division
14 shall not prevent a separate trust for which the election is made from
15 qualifying for the marital deduction(~~under the internal revenue code~~
16 ~~and its regulations~~), and provided further, that the terms of the
17 separate trusts which result shall be substantially identical.

18 **Sec. 2.** RCW 11.98.080 and 1985 c 30 s 51 are each amended to read
19 as follows:

20 (1) Two or more trusts may be consolidated if:

21 (a) The trusts so provide; or

22 (b) Whether provided in the trusts or not, in accordance with
23 subsection (2) of this section, if all interested persons consent as
24 provided in subsection (2)(b) of this section and the requirements of
25 subsection (1)(d) of this section are satisfied; or

26 (c) Whether provided in the trusts or not, in accordance with
27 subsection (3) of this section if the requirements of subsection (1)(d)
28 of this section are satisfied;

1 (d) Consolidation under subsection (2) or (3) of this section is
2 permitted only if:

3 (i) The dispositive provisions of each trust to be consolidated are
4 substantially similar;

5 (ii) Consolidation is not inconsistent with the intent of the
6 trustor with regard to any trust to be consolidated; and

7 (iii) Consolidation would facilitate administration of the trusts
8 and would not materially impair the interests of the beneficiaries;

9 (e) Trusts may be consolidated whether created inter vivos or by
10 will, by the same or different instruments, by the same or different
11 trustors, whether the trustees are the same, and regardless of where
12 the trusts were created or administered.

13 (2) The trustees of two or more trusts may consolidate the trusts
14 on such terms and conditions as appropriate without court approval as
15 provided in RCW 11.96.170.

16 (a) The trustee shall give written notice of proposed consolidation
17 by personal service or by certified mail to the beneficiaries of every
18 trust affected by the consolidation as provided in RCW 11.96.100 and
19 11.96.110 and to any trustee of such trusts who does not join in the
20 notice. The notice shall: (i) State the name and mailing address of
21 the trustee; (ii) include a copy of the governing instrument of each
22 trust to be consolidated; (iii) include a statement of assets and
23 liabilities of each trust to be consolidated, dated within ninety days
24 of the notice; (iv) fully describe the terms and manner of
25 consolidation; and (v) state the reasons supporting the requirements of
26 subsection (1)(d) of this section. The notice shall advise the
27 recipient of the right to petition for a judicial determination of the
28 proposed consolidation as provided in subsection (3) of this section.
29 The notice shall include a form on which consent or objection to the
30 proposed consolidation may be indicated.

1 (b) If the trustee receives written consent to the proposed
2 consolidation from all persons entitled to notice as provided in RCW
3 11.96.100 and 11.96.110, the trustee may consolidate the trusts as
4 provided in the notice. Any person dealing with the trustee of the
5 resulting consolidated trust is entitled to rely on the authority of
6 that trustee to act and is not obliged to inquire into the validity or
7 propriety of the consolidation under this section.

8 (3)(a) Any trustee, beneficiary, or special representative may
9 petition the superior court of the county in which the principal place
10 of administration of a trust is located for an order consolidating two
11 or more trusts under chapter 11.96 RCW. If nonjudicial consolidation
12 has been commenced pursuant to subsection (2) of this section, a
13 petition may be filed under this section unless the trustee has
14 received all necessary consents. The principal place of administration
15 of the trust is the trustee's usual place of business where the records
16 pertaining to the trust are kept, or the trustee's residence if the
17 trustee has no such place of business.

18 (b) At the conclusion of the hearing, if the court finds that the
19 requirements of subsection (1)(d) of this section have been satisfied,
20 it may direct consolidation of two or more trusts on such terms and
21 conditions as appropriate. The court in its discretion may provide for
22 payment from one or more of the trusts of reasonable fees and expenses
23 for any party to the proceeding.

24 (4) This section applies to all trusts whenever created.

25 (5) For powers of fiduciaries to divide trusts, see RCW 11.108.025.